UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
--X **09-49420-ESS**

IN RE

Van Johnson

Chapter 13

--X

Please take notice that the debtor is moving the Court objecting to the proof of claims, as filed by PRA Receivables Management LLC and LVNV Funding, pursuant to 11 USC §502 and Fed. R. Bankr. P. 3007, disallowing and expunging the claims as fraudulent and granting the Debtor such other relief as requested.

Said objection is scheduled to be heard on February 3, 2011 at 10:00 am, in the court of Hon. Judge Elizabeth S. Stong presiding at United States Bankruptcy Court, Eastern District of New York, 271 Cadman Plaza, Room No. 3529, Brooklyn NY 11201. All responses be filed within time as prescribed by Federal Rules of Bankruptcy Procedure and Local Rules of Eastern District of New York with a courtesy copy to the Chambers of Judge Craig.

Dated: December 20, 2010
New York York New York

s/ karamvir s. Dahiya
____
Karamvir S. Dahiya

Notice to:

HSBC Bank Nevada, N.A.
By PRA Receivables Management, LLC
PO Box 12907
Norfolk VA 2354

LVNV Funding LLC its successors and assigns as
assignee of MHC Receivables, LLC
Resurgent Capital Services
PO Box 10587
Greenville, SC 29603-0587

UNITED STATES BANKRUPTCY COURT
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AFFIRMATION IN SUPPORT OF DEBTOR'S

MOTION OBJECTING TO CLAIMS

HONORABLE ELIZABETH STONG, BANKRUPTCY JUDGE:

The application of Van Johnson (the "Debtor") objecting to the allowance of the unsecured claims #3-1 and 4-1 by his attorney, Karamvir S. Dahiya, Esq., a member of Dahiya Law Offices Respectfully, respectfully alleges:

1. On October 27, 2009, the Debtors filed with this court a petition pursuant to Chapter 7 of Title 11 U.S.C. (the "Bankruptcy Code"). Marianne DeRosa, was appointed the Chapter 13 Trustee.

2. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334. Venue of this case and this Motion in this district is proper pursuant to 18 U.S.C. §§1408 and 1409. The statutory predicates for relief sought herein are Title 11 U.S.C. §502, and Fed.R.Bankr.Pro. §§3001 and 3007.

3. By this motion, the Debtor seeks to disallow the following unsecured claims:

NAME OF CREDITOR	CLAIM NO.	DATE OF FILING	AMOUNT
HSBC Bank Nevada (By PRA Receivable Management, LLC)	3-1	01/26/2010	$944.80
LVNV Funding LLC assignee of MHC Receivables, LLC resurgent Capital Services	4-1	02/11/2010	$1181.71

Copies of the proofs of claim have been annexed to this motion as Exhibit "A." Furthermore, the debtor will seek an Order and Judgment from this Honorable Court imposing fines in an amount to be determined by the Court upon each creditor named above as a penalty for presenting a fraudulent claim and an award of attorneys' fees in the amount of $2,000 for each claim deemed to be fraudulent and/or disallowed.

4. Bankruptcy Rule 3001 requires that when a proof of claim is based on a writing, an original or duplicate of the writing must be filed with the proof of claim[1]. Rule 3001(a) also states that the proof of claim "shall conform substantially to the appropriate Official Form[2]." A review of the proofs of claim objected to reveals that they are devoid of any documentation as to the liability of the debtor aside from a "summary sheet" attached to the claim form which simply repeats the information filled in on the claim form. The claims as filed set forth no evidence that there is a valid contract between the debtor and the respective creditor or how the amount claimed was computed. There are no invoices, statements of accounts etc. which shows the transactions have been filed in this case.

[1] Fed.R.Bankr.P. 3001(c). If the writing has been lost or destroyed, a statement describing the loss or destruction must be filed.

[2] Fed.R.Bankr.P. 3001(a). The directions to Official Form 10, Proof of Claim, provide that "[c]reditors must attach to the proof of claim form copies of any documents showing that the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents."

5. Line 7 of Official Form B10 sets forth what type of supporting documents will act as evidence of the validity of the claim:

> "7. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary."

6. The purpose of these rules is to ensure that debtors and other interested parties have sufficient information to determine whether to object to a claim. Without such evidence, it is impossible to determine whether the amount claimed by the creditor has been inflated with the imposition of illegal post-petition interest or fees. As a minimum, recent court decisions have required creditors to produce sufficient number of monthly account statements to show how the total amount has been calculated as well as a copy of the original agreement authorizing the charges and fees included in the claim[3]. The form of the existing claims filed by the creditors in this case denies the Court, the Trustee and the Debtors the opportunity to determine the validity of the claim and the extent to which the amount of the claim is accurate and unfairly shifts the burden of determining the validity to the Debtors who are far more unsophisticated and who lack the knowledge and ability to understand credit transactions, average daily balance computations and what is the precise method to determine accrued interest on the account. Moreover, and as is further discussed below, the above-referenced proofs of claim are "unenforceable against the debtor[s] and property of the debtor[s], under any agreement or applicable law" pursuant to 11 U.S.C. §502(b)(1). These creditors are not the true owners of these debts, have no knowledge or information concerning the debtors or these debts, are not entitled to a distribution, and have, in essence, filed fraudulent claims.

[3] See *In re Henry*, slip.op.BK No. 03-25104 (Bankr. W.D. Wash. Apr. 14, 2004).

7. The creditors whose proofs of claim are being objected to are debt purchasers that the Debtors have never heard of, do not have any privity of contract with, and dispute the fact that the debts in question were ever legally purchased by these entities. In other words, these debt buyers are not the true owners of the debt and are unable to evidence any title to the account for which a distribution is sought. In fact, counsel for the Debtors wrote to each creditor requesting verification that the debts were actually purchased by them or validly assigned to them. To date, no response has been received from any of these entities. It is debtors' position that these are fraudulently filed claims. The allegations with respect to each allegedly fraudulently filed claim are set forth as follows:

A. HSBC and LVNV Funding

Debtors believe that both of these are not the true owner of this debt and that claim 3-1 and 4-1 is a fraudulently filed claim. There are no statement, records to establish that the debtor ever had these cards.

LVNV alleges in its proof of claim and supporting documentation that it purchased the debt referred to in claim #4-1 from an entity known as Sherman Originator, LLC and that Sherman Originator, LLC previously purchased this debt from MHC Receivables, LLC. Debtors dispute that Sherman Originator, LLC and/or LVNV ever purchased the MHC Receivables, LLC and allege that neither Sherman Originator, LLC nor LVNV can show through admissible evidence that they are the true owners of the MHC Receivables, LLC. On April 16, 2007, debtors' counsel sent a letter to Resurgent Capital Services, LVNV's servicing agent, requesting verification that LVNV and/or Sherman Originator, LLC purchased the MHC Receivables, LLC, for the full corporate name of the original creditor, and the address of the original creditor. To date, no response has been received. Debtors believe that LVNV is not the true owner of this debt and that claim # 4-1is a fraudulently filed claim. Further, the debtor challenges standing or any contractual obligations with MHC Receivables,LLC. Debtor did not have any benefit or financial relationship from or with MHC Receivables, LLC.

8. When debt buyers try to collect on the debt they purchased, they often cannot make a *prima facie* case. But for the fact that most debtors are bullied and harassed by debt collectors and most debtors default if sued and fail to object to claims, the collection rates would be much smaller. In 2004, the Federal Trade Commission shut down a debt buyer who tried to collect on account from "consumers who never owed the original debt in the first place. Many consumers pay to get [a debt buyer] to stop threatening and harassing them, their families, their friends, and their co-workers." (http://www.ftc.gov/opa/2004/12/camco.htm). Likewise, the Attorney General of Minnesota in 2004 sued two collection agencies that represent debt buyers. According to the Attorney General, the companies used illegal tactics such as ignoring written disputes filed by consumers to coerce those consumers into paying invalid debts. Absent an account stated, debt buyers have no knowledge whether a debt is still outstanding, whether it is in dispute, whether the statute of limitations has run out, and whether the debtor contractually ever owed money to the transferor of the debt. Absent an account stated, the debt buyer cannot make a *prima facie* case and should not be allowed to either.

9. "An account stated has been defined as an agreement between parties who have had previous transactions that the account representing those transactions is true and that the balance stated is correct, together with a promise, express or implied, for the payment of such balance." McHugh v. Olsen, 189 Ill.App.3d 508, 514, 545 N.E.2d 379 (1st Dist. 1989). Thus, a cause of action for an account stated is founded on both (a) the underlying contract and (b) the statement of account sent to the debtor and agreed to by the debtor. Both must be attached.

10. For an illustration of the problem, see Citibank (South Dakota), N.A. v. Martin, 11 Misc.3d 219; 807 N.Y.S.2d 284, 2005 N.Y.Misc. LEXIS (Civ.Ct., Dec. 16, 2005), which sets forth the applicable proof requirements:

> As a part of a credit card issuers presentation of a prima facie case, the motion papers also must include an affidavit sufficient to tender to the court the original agreement, as well as that any revision thereto, and the affidavit must aver that the documents were mailed to the card holder. n4 The same affidavit typically advances copies of credit card statements which serve to evidence a buyer's subsequent use of the credit card and acceptance of the original or revised terms of credit . . . The affidavit often addresses whether there was any proper protest of any charged purchase within 60 days of a statement (15 U.S.C. §1601; 12 C.F.R. §226.13[b][1], a provision in 12 C.F.R. part 226, referred to as "Regulation Z" or "Truth in Lending" regulation) . . .
>
> The affidavit must demonstrate personal knowledge of essential facts . . . . An attorney's affirmation generally cannot advance substantive proof . . . .
>
> . . . as to assigned claims, it is essential that an assignee show its standing, which "doctrine embraces several judicially self-imposed limits on the exercise of . . . jurisdiction, such as the general prohibition on a litigant's raising another person's legal rights" . . . A lack of standing renders the litigation a nullity, subject to dismissal without prejudice . . . . It is the assignee's burden to prove the assignment . . . . Given that courts are reluctant to credit a naked conclusory affidavit on a matter exclusively within a moving party's knowledge . . . an assignee must tender proof of assignment of a particular account or, if there were an oral assignment, evidence of consideration paid an delivery of the assignment . . . .

11. In the case of Palisades Collection LLC v. Haque, New York Law Journal, April 13, 2006, p. 20, col. 3 (Civ. Ct. Queens Co.) (Pineda-Kirwin, J.), the plaintiff was a debt collector on behalf of AT&T Wireless. **The case was dismissed against the defendant because plaintiff could not prove title to the debt, could not authenticate the contract, and could not show that the debtor had failed to**

pay. The Haque court also held insufficient the offer of "generic" contracts which could not be linked to the defendant's account.

> While it is well settled that the absence of an underlying agreement, if established, does not relieve a defendant of his obligation to pay for goods and services received on credit, (Citibank (SD) NA v. Roberts, 304 Ad2d 901 [3rd Dept. 2003]), that is not the sole impediment to this plaintiff's case. Here, without any admissible evidence from its alleged assignor, plaintiff was unable to establish that AT&T Wireless and defendant entered into a contract pursuant to which defendant was obligated to pay for the additional charges for which defendant now sues.

The court also held a claim of assignment insufficient without proof of the assignment:

> Plaintiff did not prove by a preponderance of the evidence that defendant's account was in fact assigned to plaintiff. (See Copelco Capital, Inc. v. Packaging Plus Services, Inc., 243 AD2d 534 [2nd Dept. 1997]; Citibank (SD), NA v. Martin, 2005 Slip Op 25536 [Civ. Ct. NY County]).
>
> Similarly, plaintiff, as an alleged assignor, failed to establish the requisite elements for recovery on a theory of account stated. (Heelan Realty & Dev Corp. v. Ocskasy, 2006 NY Slip Op 2166 [2d Dept. 2006]). There was no evidence before the Court that defendant assented, expressly or impliedly, that he was indebted to plaintiff, or, for that matter, AT&T Wireless, in the sum claimed, and undertook, by express or implied promise, to pay it. (Tridee Assoc., Inc. v. Bd. Of Educ. of City of New York, 22 AD3d 833 [2d Dept. 2005]).

In the case of Palisades Collection, LLC a/p/o AT&T Wireless v. Gonzalez, 58564 CV 2004, 2005 NY Slip Op 52015U; 10 Misc. 3d 1058A; 809 N.Y.S.2d 482; 2005 N.Y. Misc. LEXIS 2774 (N.Y. County Civ. Ct., Dec. 12, 2005) (Ellen Gesmer, J.), much the same thing happened on a motion for summary judgment. The court held that affidavits based on "books and records" but not executed by someone familiar with the manner in which the entity that engaged in the transactions prepared and maintained the books and records are insufficient. The court further held insufficient an affidavit that an assignment had occurred without production of the document. Therefore, plaintiff had failed to establish that it has the right to collect on the debt.

12. Other decisions also held that debt buyer affidavits and other related documents are insufficient to show that the debt buyers have title to the debt: Unifund CCR Partners v. Harrell, 2005 Conn. Super. LEXIS 2037 (Aug. 3, 2005) (Failure to produce signed agreement or affidavit authenticating purported agreement as that entered into with defendant results in denial of summary judgment. Affidavit of "plaintiff's legal coordinator" that "she has access to the records of Unifund CCR Partners and therefore has personal knowledge of the facts" not sufficient); First Select Corp. v. Grimes, 2003 Tex. App. LEXIS 604 (Jan. 23, 2003) (summary judgment for debtor affirmed where there was no evidence that the debtor used the credit card after First Select sent out an agreement modification and no copy of the written agreement between the original creditor and the consumer or the consumer's acceptance of such agreement); and CACV of Colorado, LLC v. Corda, 2005 Conn. Super. LEXIS 3542 (Dec. 16, 2005) (court refused applications to confirm arbitration awards where only document containing arbitration clause was affidavit signed with signature stamp attaching form agreement containing no dates or signatures; court also noted that NAF does not provide that arbitrator find defendant has actual notice of demand for arbitration. Accord. MBNA America Bank, N.A. v. Straub, 2006 N.Y. Misc. LEXIS 1281 (Civ. Ct. May 25, 2006).

13. Therefore, if a debt buyer, whether in the capacity of a plaintiff or a filer of a proof of claim, cannot prove that it has title to the debt, cannot authenticate the contract between the original creditor and the debtor, and cannot show that the debtor failed to make payments on the underlying debt, then the debt buyer cannot make a prima facie showing that it is entitled to payment on the debt.

14. In the case at hand, a request for verification and proof that the claim filers/debt buyers actually purchased the debt was made. No response has been received. The debtors believes that the claim filers cannot produce any admissible evidence showing the purchase and assignment of the specific debt contained in the proofs of claim filed with this Court from the original creditors or from previous debt buyers, and cannot produce admissible evidence showing an account stated and therefore, believe that they are not entitled to file the proofs of claim in question and request that they be disallowed and expunged and deemed to be fraudulently filed.

15. No prior application has been made for the relief requested herein.

WHEREFORE, the Debtors request an Order of this Court against the above-referenced creditors:

(1) Disallowing, expunging, vacating, and discharging unsecured claims #3-1, and 4-1;
(2) Imposing fines in an amount to be determined by the Court upon each creditor named above as a penalty for presenting a fraudulent claim;
(3) An award of attorneys' fees in the amount of $2,000 for each claim deemed to be fraudulent and/or disallowed; and
(4) Granting such additional and further relief that the Court deems just, necessary and proper.

Dated: New York, New York
December 20, 2010

DAHIYA LAW OFFICES LLC

By: */s/KARAMVIR S DAHIYA*_________
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New York, NY 10013
(212) 766-8000

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
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Affidavit of Service

I, the undersigned on December 20, 2010 mailed a copy of the attached motion with the postage prepaid. The said mailing was effected on the following address.

HSBC Bank Nevada, N.A.
By PRA Receivables Management, LLC
PO Box 12907
Norfolk VA 2354

LVNV Funding LLC its successors and assigns as
assignee of MHC Receivables, LLC
Resurgent Capital Services
PO Box 10587
Greenville, SC 29603-0587

Dated: December 20, 2010
York New York

s/ karamvir s. Dahiya

Karamvir S. Dahiya